IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.Rev.Pet.No. 1059 of 2007()

CRA.226/2006 of SESSIONS COURT, THALASSERY
CC.205/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, KUTHUPARAMBA

.....

REVN. PETITIONER: APPELLANT/ACCUSED

JOSE MATHEW,
CONVICT NO.2976 SON OF POULOSE,
CENTRAL PRISON, KANNUR.

BY ADV. SRI.M.A.NISSAR
SRI.S.M.PREM
SMT.K.P.SANTHI

RESPONDENT: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

CRL.R.P.No.1059 of 2007

Dated this the 29th day of March, 2007

O R D E R

The revision petitioner stands convicted for the offence under Sections 457 and 380 read with 511 IPC and sentenced to undergo R.I. for a period of one and half years under Section 457 read with 511 IPC and R.I. for a period of six months under Section 380 read with 511 IPC.

2. The prosecution case is that on 10.11.2004, at 3.00 a.m., at Kolayad desom, the accused was found attempting to commit theft by making a hole in the wall of the building of the Royal Photostat and STD booth with an iron bar. The evidence adduced in the matter consisted of the the testimony of PWs' 1 to 7, Exts. P1 and P2 and MO1. The only direct evidence in support of the case is that of PW5, the night watchman of Kolayad town, who on the particular day in the night at 1 a.m. heard some sounds and flashed the torch and saw the accused, two in number, making a hole in the wall. He called out and the accused left in an autorickshaw. A1 is absconding. A2 is the

revision petitioner. By the time he alerted others, the accused had left the place. Subsequently, PW3, C.I. of police arrested the accused on information received from A1 on his arrest. PW5 has identified the accused in the witness box. i.e, after about 4 years of the incident. It was also been brought out in the cross examination of PW5, the watchman, that PW5 is a person who was involved in an idol theft case and convicted for imprisonment of six years. As noted by the courts below, the particular background of PW5 alone is not sufficient to discard his testimony as such. I find that nothing has been brought out in the cross examination of PW5 to indicate that he did not identify the accused properly in the torch light. In the circumstances, I find no reason to interfere in the findings of the court below.

3. It was pointed out that the accused had already undergone imprisonment for one year and four months. The total period for which he has been ordered to be imprisonment is one year and six months. In the circumstances, considering the fact that he has already undergone imprisonment for about one year and four months, the sentence is confined to a period of

imprisonment already undergone. The accused is ordered to be released forthwith, if not required to be detained in any other case.

The revision petition is disposed of accordingly.

K.R.UDAYABHANU,
JUDGE

csl